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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of	)	
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Closed Captioning and Video	)	
Description of Video Programming	)	
	)	**MM Docket No. 95-176**
Implementation of Section 305 of	)	
the Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

REPLY COMMENTS OF VIACOM INC.

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March 31, 1997

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To the Commission:

REPLY COMMENTS OF VIACOM INC.

In the above-captioned *Notice of Proposed Rule Making* ("*Notice*"), FCC 95-176 (released January 17, 1997), the Commission proposed a regulatory framework to implement the Congressional mandate, in Section 713 of the Communications Act of 1934, as amended ("Section 713"), that video programming be accessible through the provision of closed captions. Viacom Inc. ("Viacom"), a diversified entertainment company whose video programming ownership interests include television broadcasting, a broadcast television network, syndicated television programming, cable networks and the production and distribution of theatrical motion pictures,[1] fully supports the objective that its works be widely accessible to the hearing disabled. By these reply comments, Viacom seeks to assist the Commission in formulating rules that further that objective while also ensuring that such rules do not limit the diversity of programming and viewpoints.

I. Video Programming Providers Should Be Directly Responsible for Compliance with Closed Captioning Requirements.

A. The Commission Must Apply Closed Captioning Requirements on a Network-by-Network Basis.

Viacom agrees with the Commission's alternative proposal, as endorsed by the League for the Hard of Hearing, Motion Picture Association of America, Inc. ("MPAA"), the National Cable Television Association, Inc. ("NCTA"), and the National Association of Broadcasters ("NAB"), that responsibility for compliance with closed captioning requirements be placed on video programming providers, *i.e.*, broadcast television stations and multichannel video programming distributors ("MVPDs"), such as cable, MMDS, DTH, LMDS, SMATV and OVS operators.[2] Neither Section 713 nor the legislative history of that statute indicates

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[1] Specifically, subsidiaries of Viacom hold licenses for eleven television stations and Viacom is the 50%-owner of UPN, a nascent television network co-owned by a subsidiary of Chris-Craft Industries, Inc. Viacom, through its Paramount Pictures subsidiary and through its majority ownership of Spelling Entertainment Group, also produces broadcast network programs and produces and distributes syndicated television programs, and engages in the distribution of off-network television programs. In addition, Viacom wholly owns several cable television networks, including MTV: Music Television, Nickelodeon/Nick at Nite, and their recent spin-offs, M2 and Nick at Nite's TV Land, and VH1, and the premium television services Showtime, The Movie Channel and Flix. Viacom also co-owns USA Network, Comedy Central, Sci-Fi Channel, All News Channel and Sundance Channel.

[2] However, if the Commission adopts its proposal to apply the percentages of programming that must be captioned with respect to MVPDs on a system-wide basis (as opposed to a network-by-network basis), then the Commission must ensure that appropriate safeguards are in place that will protect unaffiliated program services against discrimination by MVPDs that otherwise could have the incentive and the ability to require that unaffiliated program services bear a disproportionate amount of the burden of captioning in their MVPD systems. Failure to provide these safeguards will allow cable networks affiliated with the MVPDs a considerable economic and competitive

Congressional intent to impose regulatory requirements on program producers and owners rather than on program providers. Indeed, adopting a framework whereby the producers and owners were directly responsible for compliance with the closed captioning rules would create an administrative and enforcement nightmare in which complainants would have to track down the identity of program owners and the Commission would have to monitor the percentage of captioning implemented by every program producer and owner.

The common-sense approach of centralizing compliance with the programming providers is acknowledged by the Commission in the *Notice* at ¶122, in which enforcement and compliance review mechanisms are outlined. There, the Commission proposed that first-line responsibility for compliance with the closed captioning rules will rest with broadcast television stations and MVPDs. Specifically, under the Commission's enforcement mechanism, a party filing a complaint to the FCC will be required to notify the video programming provider, who, in turn, will be permitted to respond. *Id.* And under a proposed alternative dispute resolution process proffered by the Commission, complainants will be required to first notify the video programming provider before filing with the Commission and the video programming provider will be allowed a period of time to resolve the complaint "at the local level." *Id.* at ¶123. In short, smooth implementation of the closed captioning requirements necessitates imposing direct liability on the "local" distribution outlet, that is, the broadcast television station or MVPD.

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advantage in that the savings realized by the affiliated program services in not having to caption their programming would be available for incentives, promotional and other uses.

B. Compliance with the Closed Captioning Requirements Should Be Structured Similar to That Under the Children's Programming Commercial Limits Rules.

As stated above, Viacom believes that liability for compliance with the closed captioning rules, both during the phase-in period and thereafter, must fall directly on the broadcast television stations and MVPDs. Viacom urges that the liability procedures implemented for closed captioning be borrowed from those developed in connection with the rules governing commercial limits during children's programming. *See* Section 73.670 of the Commission's Rules, 47 C.F.R. §73.670.

The Children's Television Act of 1990 required the Commission to adopt rules limiting the number of minutes that broadcast television stations and cable operators could air commercials during children's programming. *See* 47 U.S.C. §303b. In so doing, the Commission determined that cable operators would be directly accountable for violations occurring on cable networks, but not for those occurring on broadcast television stations carried by the operators. Television stations, the Commission reasoned, were separately liable under the Children's Television Act for complying with commercial limitations, making it unnecessary to hold cable operators additionally liable. *See Policies and Rules Concerning Children's Television Programming*, 6 FCC Rcd 2111, ¶10; *on reconsideration*, 6 FCC Rcd 5093 (1991). In addition, the Commission's rules permit both television stations and cable operators to "reasonably rely on information provided by networks," thereby eliminating the Commission's need to monitor networks' individual compliance. *See id.*

Similarly, MVPDs and television stations should be held directly liable to the Commission for compliance with closed captioning requirements--both during the phase-in period and thereafter. However, television stations and MVPDs should be allowed to rely on broadcast and cable networks' certification that such networks, in turn, have closed captioned the requisite amount of programming. Any discrepancy between the amount of programming certified as captioned and aired by the cable network and the amount of programming actually captioned and aired would constitute a private matter between MVPDs and the cable network and should be addressed in individually negotiated programming contracts.

As for record-keeping, MVPDs and television stations should be required to file quarterly reports for placement in their public inspection files, as is required under the Commission's rules for compliance with commercial limitations during children's programming. *See* 47 C.F.R. §§73.671, 73.3526. However, the phase-in percentages of closed captioned programming mandated by the Commission should be assessed on an annual basis. As noted by NCTA, an annual compliance approach would be consistent with the Commission's transition milestones, which are predicated on calendar years. *See* NCTA at 16-17. Such an approach would parallel that employed under another set of rules implemented under the Children's Television Act of 1990, the new children's educational and informational programming rules. *See Policies and Rules Concerning Children's Television Programming* in MM Docket No. 93-48, FCC 96-335 at ¶120 (released August 8, 1996). Under those rules, in which television stations are required to maintain quarterly reports indicating their quantity of weekly educational and informational programming over the previous quarter, compliance with the weekly programming quantity requirements are evaluated over a period of six months rather than by the quarter. Because closed captioning requirements are tied to annual benchmarks rather than weekly benchmarks as is the case under the children's educational programming rules, however, evaluation of compliance with captioning requirements on an annual basis, rather than on a six-month basis, would be appropriate.

II. Library Product Should Be Subject to a Flexible Regulatory Scheme.

Viacom companies have for decades produced and distributed syndicated television programming and theatrical motion pictures. And they presently operate cable networks --such as Nickelodeon/Nick at Nite and its recent spin-off Nick at Nite's TV Land, as well as MTV, VH1, M2 and the Flix premium television service-- the schedules of all of which substantially or wholly include what the *Notice* would characterize as library programming. Therefore, Viacom is keenly interested in the Commission's implementation of closed captioning requirements for library product under Section 713(b)(2).

A. The Commission Need Not Mandate Captioning of Library Product.

Section 713 (b)(2) provides that video programming providers or owners "maximize" the accessibility of video programming "first published or exhibited" prior to the effective date of the Commission's regulations. The express language of the statute, that programming providers or owners "maximize" the accessibility of previously produced programming, as opposed to the stricter standard of "full accessibility" that applies to new programming, indicates that Congress did not intend that the Commission adopt rigid closed captioning rules for library product. Indeed, the legislative history of Section 713 reveals that Congress was willing to forgo a captioning requirement with respect to previously produced programming rather than have such programming "not aired due to the costs of captions." H.R. Report 104-204, 104th Cong., 1st Sess. ("House Report") at 114.

Given the significant amount of captioned programming that exists today and the significant increase that will come from implementation of the Commission's rules with respect to new programming, the Congressional mandate to "maximize accessibility" to library programming will be realized by virtue of the inevitable continuing cycle of new programming replacing older programming. Thus, the Commission should refrain from imposing any additional obligations with respect to library programming at this time. However, Viacom proposes that the Commission revisit the issue of the amount and sufficiency of captioned library product five years after effectiveness of its captioning rules in order to determine whether the Congressional mandate is being met.

However, if the Commission believes that it must introduce regulations now to govern the captioning of library product, then Viacom would support the three-pronged approach advocated by the MPAA in its comments.

B. The Regulatory Scheme For Library Product As Proposed By MPAA.

1. Library Product Should Be Narrowly Defined.

Viacom agrees with the MPAA that the Commission interpret the statutory language of "first published or exhibited prior to the effective date of such regulations" as encompassing all programming first publicly distributed *in its original form in any medium, including theatrical films and home videos,* prior to the effective date of the Commission's closed captioning rules. *See* Comments of

MPAA at 13. Viacom supports this definition as an appropriate bright-line test for the Commission in enforcing the rules, for cable networks in certifying their satisfaction of the phase-in percentages, and for broadcast television stations and MVPDs in directly complying with the rules. Thus, notwithstanding the subsequent editing of a program or a change in the medium in which that program is later exhibited, the date of first publication remains a constant that is readily ascertainable.

2. Library Product Should Ultimately Encompass "New" Programming That Is At Least Ten Years Old.

For the second prong of its proposal, MPAA in its comments urges that the category of library programming be expanded to encompass any "new" programming once that programming becomes at least ten years old, thereby allowing future exhibitions of such programming to be treated under the less stringent captioning rules for library product. *See* Comments of MPAA at 13-14. Viacom agrees, because this proposition is consistent with the statute in that "new" programming certainly will have been made "fully accessible" through closed captioning--for its first and subsequent exhibitions--within the ten-year period. Even after ten years, the new programming will be required to be transmitted with captioning so long as it is exhibited after the tenth year in a format that is already captioned. For example, if, after ten years, a television series is exhibited in a captioned format identical to that sold in syndication prior to the tenth year, the television broadcaster or MVPD will be obligated under the rules to run that series with the captions. If, however, that series is reformatted after the tenth year, that programming would be treated as library product for purposes of the closed captioning regulations.

This ten-year rule recognizes the economic burden of captioning what, although once "new," has become dated programming that might, if subjected to costly captioning rules, become or remain archived. And programming that is archived is viewed by no one, thereby depriving all members of the viewing public of a diversity of viewpoints.

C. A Transition Period of Fifteen Years Should Be Implemented for Library Product, With No More Than 50% of All Library Product Actually Aired Subjected to Closed Captioning Rules.

The third prong of the MPAA proposal urges a phased-in approach for captioning library product. *See* Comments of MPAA at 14-17. Under the MPAA framework, the phase-in period would span fifteen years: 10% of all library product actually aired must be captioned within three years, 20% after six years, 40% after twelve years, and 50% after fifteen years. Viacom endorses such an approach as conforming with the *Notice*'s statement that neither "immediate [n]or near term captioning of library programming is appropriate." *Notice* at ¶58 (citation omitted). Additionally, Viacom emphasizes, as did the MPAA, that in no event should the rules require that more than 50% of library product *actually aired* be subject to captioning requirements. Indeed, even a 50% requirement presents a substantial economic undertaking for cable channels whose content consists predominately (as do Nick at Nite's TV Land and Showtime Networks' Flix program service) or significantly (as do MTVN's VH1 and M2) of library product.

III. Specific Classes of Programming Should Be Made Expressly Exempt From Closed Captioning Rules.

A. The Language and Legislative History of Section 713 Provide the Commission with the Authority to Exempt Specific Classes of Programming.

Congress expressly provided relief from closed captioning regulations for two sets of circumstances. First, Section 713(d)(1) permits the Commission to exempt by regulation "classes of programs, or services" for which the Commission has determined that the provision of captioning would be "economically burdensome." And second, Section 713(d)(3) authorizes the Commission to grant additional exemptions on a case-by-case basis where providing captions would result in "an undue burden."

Viacom requests that, rather than defer the determination of exemptions on a case-by-case basis for a later date, the Commission immediately exercise its rule making authority under Section 713(d)(1) in the context of this proceeding to exempt from closed captioning requirements four specific classes of programs and services. Those programs and services are: (1) all "start-up" cable networks for an initial period; (2) all programming produced within a specified budget or earning no more than a specified licensing fee; (3) all interstitials and promotional advertisements and short-segment programming of a specified duration; and (4) all music videos, as well as all live and recorded musical performances and concerts.

Viacom respectfully urges the Commission to adopt a Report and Order in connection with this proceeding that specifically identifies all classes of programming that are exempt from the closed captioning rules. Any vagueness or ambiguity would make compliance with the new rules a guessing game and would undermine the overall effectiveness of the closed captioning rules that are ultimately adopted. Uncertainty over application of the rules and, therefore, uncertainty over the amount of captioning costs that might be incurred, could stymie the launch of new, start-up networks and threaten the viability of already-launched nascent networks.

Further, uncertainty over the application of the captioning rules and resulting costs to program producers who create works within small budgets or whose works garner small licensing fees could reduce the number of such works produced and exhibited. And uncertainty over the application of the captioning rules to interstitial and promotional advertisements and other short-segment programming could lead to the shelving and non-use of such programming or to a decision to discontinue creating new product. Finally, uncertainty over application of the captioning rules to music videos could foreclose production and distribution of music programming by the independent music industry, which serves as an alternative viewpoint to the major labels. In sum, the Commission's failure in this proceeding to expressly and affirmatively exempt *specific* classes and services of programming from closed captioning would run counter to Congress' directive that the Commission "balance the need for closed captioned programming against the potential for hindering the production and distribution of programming." Conference Report, H.R. Report 104-458, 104th Cong., 2nd Sess. ("Conference Report") at 183.

In determining which classes and services of programming to specifically exempt, the Commission must, pursuant to Congressional intent under Section 713, consider "several factors." *See* Conference Report at 183. Those factors include, but are not limited to, the following:

> (1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact of the program; (4) the cost of the captioning, considering the relative size of the market served or the audience share; (5) the cost of the captioning, considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; and (7) the existence of alternative means of providing access to the hearing impaired, such as signing.

See id. Further, when considering exemptions, the Commission "should focus on the individual outlet and not on the financial conditions of that outlet's corporate parent, nor on the resources of other business units within the parent's corporate structure." *Id.* It is within these statutory standards that Viacom seeks exemption of "start-up" networks, works produced within a specified budget or earning no more than specified licensing fees, all interstitials and promotional advertising and short-segment programming of a specified duration, and music videos, as well as live and recorded musical performances and concerts.

B. The Commission Should Expressly Exempt "Start-Up" Networks.

Viacom ardently supports NCTA's proposal to exempt start-up networks. *See* Comments of NCTA at 19-20. As noted by NCTA and other commenters, cable networks are typically not expected to break even until four or five years from the date of their launch. *See* Comments of NCTA at 19 (*citing* Cable TV Programming, April 30, 1995 at 2), Comments of A&E Television Networks, The History Channel and Ovation at 23. That is because launching a network involves substantial costs that are not readily recouped until such time as the start-up network has achieved a sufficient degree of distribution on MVPD systems nationwide to attract subscriber revenues and, in the case of basic cable networks, advertising revenues. To achieve this degree of distribution often takes four to five years.

For example, Viacom's two new spin-offs, Nick at Nite's TV Land, which launched eleven months ago, on April 29, 1996, and M2, which launched eight months ago, on August 1, 1997, are currently seeking carriage on MVPD systems across the nation so as to build a subscriber base that will yield a positive cash flow. At this time, neither TV Land nor M2 airs paid commercials and, therefore, earns no revenues from advertising. Moreover, TV Land and M2 operate as separate business units with their own fixed budgets and financial demands independent of their parent companies. This last factor is particularly important in light of Congress' intent that the Commission make exemptions by focusing on the individual outlet and "not on the financial conditions of that outlet's corporate parent, nor on the resources of other business units within the parent's corporate structure." Conference Report at 183.

Given the substantial expenditures and inability to generate significant revenues associated with launching new cable networks, the added costs to those networks of closed captioning would not only impair their viability, but could ultimately lead to their demise, thereby depriving all viewers of new video outlets. Such a result would not comport with the legislative intent of Section 713, to ensure that the Commission's closed captioning rules not diminish programming diversity. Nor would such a result be consistent with Congress' objective of eliminating market entry barriers for small entities --if each start-up network is viewed separate and apart from its parent company-- a goal which the

Commission cites approvingly in the context of closed captioning requirements. *See* Notice at note 165. ("We seek comment regarding the burden on small entities in an effort to achieve the market entry objectives set forth in Section 257 of the 1996 Act.")

The factors supporting an exemption that are cited in the legislative history--the nature and cost of providing closed captions, the impact on the operations of the cable network, the financial resources of the cable network itself and not of the network's parent company, and the cost of captioning considering the relative audience share--are all present in the case of start-up cable networks. The repercussions on these new, struggling channels of paying approximately $2,000 per hour for captioning their programming constitutes an economic burden which clearly outweighs the benefits to be derived from captioning.

Accordingly, Viacom urges the Commission to establish an incubation period for nascent cable networks by *per se* exempting a cable network from closed captioning regulations for five years from the date of that network's launch. During this time, a fledgling network would be permitted to devote its limited resources to rolling out its new service without the costly burden of captioning a prescribed percentage of its programming.

At the expiration of the five-year incubation period, any new programming exhibited by the network would have to be captioned in compliance with the rules for that class of programming, but pursuant to a phase-in schedule that commences with the end of the five-year exemption period rather than with the effective date of the Commission's rules. For example, a new cable network whose exemption period terminates on August 8, 2002, would be obligated to caption 100% of its non-exempt new programming after August 8, 2012 (if a 10-year transition period for new programming is adopted), with 25% of such programming captioned after August 8, 2005 (the three-year mark), 50% after August 8, 2007 (the five-year mark), and 75% after August 8, 2009 (the seven-year mark).

If, at the end of the five-year exemption period a new network remains financially troubled such that the captioning requirements would continue to threaten its survival, such network could petition the Commission under procedures implemented under Section 713(d)(3). Those procedures should require evidentiary documentation specific to the network's costs and revenues, but not to the network's parent company, and should include a comment-and-reply period. A waiver period tailored to the individual channel's circumstances should be granted where the Commission finds that the economic burden of captioning threatens the network's survival.

C. The Commission Should Expressly Exempt Works With Small Budgets or Low Licensing Fees.

Viacom endorses the joint comments of the Association of Independent Video & Filmmakers, Redeemable Features, and First Run Features (collectively, "Independent Filmmakers") and urges the Commission to exempt from closed captioning requirements programming meeting certain financial criteria. Indeed, as detailed above, the legislative history of Section 713 mandates that exemptions be crafted based upon several cost-based factors. *See* Conference Report at 183.

As noted by the Independent Filmmakers, for example, producers of independent films operate with funds cobbled from personal credit cards and loans from family and friends. *See* Comments of Independent Filmmakers at 1.

These funds not only finance the production of a film, but the marketing of that film. As a result, it is difficult today for independent filmmakers to secure exhibition of their product. This risk is not limited to independent filmmakers, but adheres to any works that are produced with a small budget or that generate small licensing fees. The added costs of closed captioning might well eliminate these works as an alternative voice because the producers would be unable to afford the expense of closed captioning or the cable networks featuring these works would be compelled by market pressures to either reduce the license fees they pay for such works or reduce the number of such works that they license for exhibition.

Such a result would be inconsistent with the Congressional mandate set forth in Section 257 of the Act relating to market entry barriers and an express "national policy" that calls upon the Commission to "promote the policies and purposes of this Act favoring diversity of media voices," among other goals. 47 U.S.C. §257. That mandate, although set forth in Title I of the Act, which governs telecommunications services, was directly imported into this proceeding by the *Notice*, which sought comment on the impact of closed captioning rules on "small entities." *Notice* at n.165. In order to reduce market entry barriers for producers creating works within a limited budget or earning for those works a small licensing fee, the Commission should expressly exempt from closed captioning requirements those works produced with a budget of $100,000 or less or earning a license fee from a broadcast or cable network of $10,000 or less. Compliance with these criteria would be met by a certification from the program producer to the broadcast or cable network licensing the subject work that the work had been produced with a budget no greater than the benchmark. And the network would, in turn, certify the budget and/or license fee benchmark to the broadcast television station or the MVPD. By relieving these producers from the economic burden of closed captioning --whose costs can total nearly half of a work's licensing fees-- the Commission will nurture alternative programming sources and, thereby, satisfy the Congressional "national policy" of promoting a diversity of voices.

D. The Commission Should Expressly Exempt Interstitials, Promotional Advertisements, and Short-Segment Programming of Fifteen Minutes' Duration of Less.

Viacom urges the Commission, as did the MPAA and NCTA, to exempt interstitials and promotional advertisements from closed captioning rules. *See* Comments of MPAA at 17, Comments of NCTA at 21. As acknowledged in the *Notice*, interstitials and promotions are largely textual in nature. *See Notice* at ¶79. Viacom asserts that these categories of programming, as well as other short-segment programming, generally have a short shelf life. Consequently, the economic burden of closed captioning these classes of programming that have limited exhibition may result in decreased production of such programming.

Because of the large volume of interstitial and promotional material created, as well as the short timeline between production and exhibition of such material, a bright-line test is needed for ease of administration. Accordingly, Viacom endorses the guideline proposed by MPAA, that all programming material of fifteen minutes' duration or less be *per se* qualified for exemption. *See* Comments of MPAA at 17-18. Interstitials and promotional advertisements that are greater in length than this *per se* standard, however, should continue to be exempt under the exemption granted to that class of programming.

E. The Commission Should Expressly Exempt Music Videos and Live/Taped Musical Performances and Concerts.

1. Music Videos.

As the parent company of such music-based cable networks as MTV, VH1 and M2, Viacom supports the recording industry's continued practice of captioning the majority of its music videos. The Recording Industry Association of America ("RIAA"), which represents record companies that create, market and distribute over 90 percent of all sound recordings and music videos produced in the United States, notes in this proceeding that its members voluntarily initiated that practice in 1989. *See* Comments of RIAA at 1. In 1995 alone, according to the RIAA, 750 music videos were closed captioned. *See id.* at 2.

The comments of the National Association of Independent Record Distributors and Manufacturers ("NAIRD") tell a different story, however, one nearly identical to that of independent filmmakers. According to NAIRD, which represents more than 1300 companies from various aspects of the independent music industry, its members have undertaken efforts to voluntarily caption their product. Yet, notes NAIRD:

> Moving to make closed captioning mandatory for all music videos would certainly create unnecessary expenses for several members of NAIRD, most of which are companies operating with very limited budgets, and could very well prevent many of these videos from being released.

Both the RIAA and NAIRD, while pledging continuing efforts at voluntary captioning, request exemption from mandatory closed captioning based upon the distinctive artistic nature of their members' product. Viacom endorses that exemption request. As noted by RIAA, of all classes of programming cited in the *Notice* as potential candidates for exemption, music alone is unique. *See id.* at ¶ 72-84. Music videos rely heavily on visuals and music and the lyrics often are subordinated to a tertiary or lesser role. In short, words generally are not integral to the music video product. Thus, the purpose of closed captioning --to convey narrative, dialogue and other sounds critical to a plot or storyline-- is lost in the context of music-based programming. As a result, the economic burden of applying closed captioning rules to music videos outweighs any incremental benefit to the public.

Further, in light of the fact that the major record labels voluntarily caption a majority of their music videos and will continue to do so in the coming years and most likely at a higher rate, Viacom asserts that imposing closed captioning requirements on the music video industry as a whole, with the resulting undue economic burden imposed upon independent labels, weighs heavily in favor of exempting music videos. While it might be possible for broadcast television stations and MVPDs to segregate music videos produced by independent labels, such a task is time-consuming and neither practical nor justified. Given the significant voluntary captioning already in place, the feasible method of protecting the voice of independent labels is to exempt all music videos.

2. Live and Recorded Musical Performances and Concerts.

Like music videos, live and recorded musical performances and concerts represent a visual and musical medium in which lyrics are tertiary in importance. Moreover, this type of programming is infrequent and is often presented by broadcast and cable networks as specials. Captioning such program live is problematic in that many artists perform by request or spontaneously. Even were the network to obtain in advance the lyrics for every song an artist is scheduled to perform, changes are inevitable. An artist may not only modify the lyrics of a song as he or she performs, but may add songs to a line-up for which lyrics were never provided in advance. A captioner attempting to translate lyrics as they are performed, without benefit of any lyric sheet, would be hard-pressed to accurately caption the performance because lyrics are often unintelligible. The recorded version of a live performance presents similar problems in that lyrics that were ad-libbed may not be decipherable even if replayed several times. For the reasons discussed above with respect to music videos and because of the inherent difficulties in captioning musical performances, Viacom urges the Commission to exempt this class of programming from closed captioning requirements.

IV. Conclusion.

For the reasons stated above, Viacom urges the Commission to adopt closed captioning rules that make television broadcasters and MVPDs directly responsible for compliance with the rules pursuant to a framework similar to that employed under the children's programming and commercial limitations regulations and policies. Additionally, Viacom advocates a flexible regulatory scheme for library product, and express exemptions from the rules for: "start-up" cable networks; programming that is produced with a budget of $100,000 or less or earning licensing fees of $10,000 or less; all interstitials and promotional advertisements and short-segment programming of fifteen minutes' duration or less, and music videos and live musical performances. Incorporating these provisions into the closed captioning rules will balance of the needs of the hearing disabled with the economic realities of the video programming marketplace.

Respectfully submitted,

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March 31, 1997